

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

NATIONAL LIABILITY & FIRE INSURANCE CO.	:	
	:	
and	:	
	:	
BOAT OWNERS ASSOCIATION OF THE	:	Civil Action No: 17-0038-S-PAS
UNITED STATES	:	
	:	In Admiralty
Plaintiffs,	:	
	:	
v.	:	
	:	
NATHAN CARMAN	:	
	:	
Defendant.	:	

**PLAINTIFFS’ MEMORANDUM STATING BASIS FOR MOTION TO SEAL
DEFENDANT’S EXAMINATION UNDER OATH**

Plaintiffs NATIONAL LIABILITY & FIRE INSURANCE COMPANY and BOAT OWNERS ASSOCIATION OF THE UNITED STATES in accordance with LR GEN 102(b)(1) state the basis for sealing the transcript of defendant Nathan Carman’s pre-litigation December 16, 2016 Examination Under Oath (“EUO”), which is Ex. G to Plaintiff’s Second Motion to Compel Discovery from Defendant or Alternative Motion to Determine Sufficiency of His Denial.

In that second motion to compel it was noted that Counsel agreed at the August 7, 2017 Rule 16 Conference to move for a protective order for defendant’s upcoming (but not yet scheduled) video deposition and its transcript as well as his EUO transcript. No motion for a protective order has been filed. Nevertheless, in keeping with the intent of discussions at the Rule 16 Conference, plaintiffs are moving to efile the EUO transcript under seal. *See* ECF No.

20 at 1 n.2.

In the parties' pre-Rule 16 Conference filings defendant raised concerns that defendant Nathan Carman has "Asperger's and the tabloid press has had a field day with him." ECF No. 16-1 at 4. While plaintiffs do not agree with that characterization, we did agree by email that we would not distribute or publish any video of Mr. Carman's deposition or its transcript, besides efilings, without a *subpoena*. *Id.* at 2. At the Rule 16 Conference plaintiffs understood this agreement to encompass defendant's EUO transcript as well.

Plaintiffs had earlier on February 1, 2017 provided a copy of the EUO transcript to United States Coast Guard Investigative Services.

Following receipt of an August 17, 2017 *subpoena duces tecum* in *Santilli v. Carman*, Docket No. 313-2017-EQ-00396 (N.H. 6th Circuit Probate Division), Ex. P, the EUO transcript was provided to the attorneys representing the sisters of Mr. Carman's deceased mother, with the agreement that they would not share it with the media, Ex. Q.

Plaintiffs recognize there is substantial media interest in this case. A cadre of reporters and photographers was waiting outside the Courthouse after the Rule 16 Conference but none of the lawyers for either side made any substantive comments. With every efile in this case a news report appears online, in print, and on TV almost immediately. While plaintiffs appreciate the public's interest in Nathan Carman and "the presumption in favor of access to judicial documents," *U.S. v. Potter*, 394 F.Supp.2d 475, 478 (D.R.I. 2005), we feel bound by the Rule 16 Conference agreement between counsel that Mr. Carman's pre-litigation EUO and his upcoming deposition are primarily to be used in legal proceedings and do not believe we should at this point make them accessible to non-parties without a *subpoena* or order of the Court.

In sum, because Nathan Carman's EUO would be accessible to the media if efiled in the

normal course, for the reasons stated above plaintiffs move that it be filed under seal unless otherwise directed.

Dated: October 3, 2017.

Respectfully submitted,

/s/ David J. Farrell, Jr.

David J. Farrell, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2017 I filed this memorandum via the Case Management/Electronic Case Filing System, through which a copy shall be electronically delivered to all individuals who are listed as registered participants in connection with the above-captioned action.

/s/ David J. Farrell, Jr.